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REGULATORY REFORM IN ALBERTA

A PAPER SUBMITTED IN PARTIAL FULFILMENT

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MICHELLE CONSTANCE CHRISTOPHER: June 1983

There is, I believe, only one choice. We can accept the loss of parliamentary responsible government or we must accept a more limited role for our government. If we want the government to run just about everything, we will end up with a bureaucracy running just about everything, with ministers floundering more and more, losing more and more public respect and becoming steadily less in charge. If we want to retain -- or more accurately, regain -- parliamentary responsible government, we have to accept a more limited role for government. What is involved is the recognition that democratic responsible government and all-pervasive government are not compatible. They cannot exist together. We cannot have both. If we want all-pervasive government we must accept more and more government by improvisation or by bureaucrats who will become increasingly inaccessible to scrutiny. If we want democratic responsible government with decisions being made by ministers responsible to Parliament, then we must accept a more limited view of the role and activities of our government and accept an arrangement in which decision making is decentralized.

I am not speaking here simply to (...) governments being given more authority, although there is doubtless room for some desirable readjustment of authority between the different levels of government. (...)

I am not arguing for a return to laissez-faire and the abandonment of all government regulation. I am arguing that the government cannot do well all it is trying to do and that we would be wise to get the government out of areas of responsibility which are reasonably self-regulating or can be made so. (...) We ought not to overload our politicians with responsibilities they cannot satisfactorily discharge. We are asking more of government than parliamentary responsible government can perform. (...) We ought to be concerned.

(Robert Stanfield, in conversation with the Institute for Research on Public Policy, 1978)

Although much has been written about the regulatory process in general, and about the need for regulatory reform in particular, little action has been taken by our parliamentary representatives. There is a strong temptation to borrow the academic's lament that this is so simply because the politicians never read what the scholars have written. However, this is hardly accurate: apart from the fact that our elected representatives have served, and do serve on various committees studying regulations and regulatory reform, it is clear that the problem has a much wider base. In one opinion, it is unlikely that much will come of regulatory reform,

> "not because reform isn't a good idea, but because it is a political orphan that no one will adopt. Consumers' movements -- weak though they are -- are fairly uncritical of excessive regulation. Labour sees regulation as part of hard won social benefits. For farmers, regulation is economic protection and security. (...) Apart from rhetorical flourishes, solid, sound, and dedicated support has been almost entirely absent. (...) On the premise that it is only squeaky wheels that cause change, one soon comes to the conclusion that complaints about regulation make great fodder for speeches about free enterprise, but that, in reality, regulations have become as inevitable as death and taxes, and are to be faced with the same sense of resignation."1

In another opinion, "regulatory reform is like motherhood,

apple pie, and the flag. Everyone favours it. It has become a rallying cry for politicians of almost every philosophical persuasion."[2] Regulatory reform, by the definition of an American attorney general, "really means, in the generality in which it is couched, all things to all people."[3]

Unfortunately, it is precisely because regulatory reform means 'all things to all people' that it is a political orphan or a common rallying cry rather than an active government policy. If only one thing emerges from the plethora of literature on the subject, it is that there is no clear definition of regulatory reform. Part of the confusion about regulatory reform arises because different people are talking about different kinds of regulations. Regulations, as a form of delegated legislation, constitute law and apply to many diverse aspects of life in a parliamentary democracy. Most of the discussion about regulatory reform focuses on either economic or government regulations, while less attention falls on social regulations. In addition, there are many different perspectives -- philosophical, administrative, legal, political -- from which to approach the subject, and these also add to the confusion.

This paper is an attempt to define regulatory reform in

the context of Alberta politics and goverment. The approach of the paper will be first to introduce the philosophy of delegated legislation, and current ideas about parliamentary control of the regulatory process. Second, the paper will review the Alberta regulatory environment with reference to other jurisdictions for clarification. The third and last part of the paper will concentrate on specific proposals for regulatory reform in Alberta.

The most common justification for the use of delegated legislation given by scholars and politicians alike has to do with the increasing complexity of present day society. Legislators are often criticized for passing "skeleton acts" which set out broad principles and goals while delegating responsibility for technical and administrative details to Ministers, government departments, and regulatory agencies. The obvious problem is that in the case that such substantive and sweeping power is abused, the courts may interpret the intent of the statute in a manner other than that originally intended by the legislator. However, this problem is one that belongs more to the politician and the legislative draftsman than to a paper on the regulatory process in Alberta.

History suggests that the use of delegated legislation

is not simply a current phenomenon related to a complex society. One paper goes so far as to suggest that "for as long as history has been recorded, the organizations of man have been governed by laws and administered by regulatory decrees."[4] While this may be true in a broad sense, it was not until the evolution of parliamentary government in England during the reign of Edward III that a clear distribution of powers allowed legislation to emerge as an instrument of government.[5] Parliament began to sanction legislation that delegated powers in certain areas, but the use of royal prerogative and non-Parliamentary delegation was widespread until developments at the death of Charles I lead to the supremacy of Parliament.[6]

There is evidence that, having gained some control over royal prerogative, Parliament was reluctant to delegate powers: it resorted to subordinate legislation only where speed was of the essence, and conferred only limited administrative powers on local authorities.[7] Parliament was criticized as being insensitive to the social problems of the day, but in fact both the government and the statutes it produced were overburdened. This was due, in part, to the preponderance of "details and technicalities which were often beyond its scope of competence and consumptive of

valuable time which could have been devoted to the development of important legislative principles."[8] It is important to note that while "regulations" were mentioned in statutes from as early as 1819 [9], authority to make regulations was not formally delegated. Rather, regulations were passed as part of statutes themselves. Parliament recognized that the Executive and its agents were subordinate to the Legislature, but it remained cautious.

Generally, the attitude of Parliament toward delegated legislation began to change as parliamentary government evolved. It was clear that as the functions of the various branches of government took shape, the Executive would indeed remain subordinate to the Legislature. Moreover, legislators realized that their affairs were unmanageable, and reform was popular. Statutes such as the First Reform Act (1832) and the Great Reform Act (1832) marked the earliest examples of true delegated legislative power.[10] The Poor Law Amendment Act of 1834 further illustrates the trend toward the use of delegated legislative power: remarkably, commissioners were given general power to "make such rules and regulations for the management of the poor...as they shall think proper."[11] Understandably, one of the major consequences of the movement toward the use of delegated legislation was (and is) the rapid, steady growth of

the civil service. Parallel to this development was the tendency to centralize administration, and later to expand through departments, and agencies in an attempt to fulfil the mandate of increasing responsibility.

However, then as now, it was impossible to hold ideals such as Bentham's "General View of a Complete Code of Laws." Bentham wanted the citizen to have easy access to the law, "free from the need of professional interpretation on the part of the fee-collecting fraternity."[12] " "Citizen," the legislator was to say, "what is your condition? Are you a father? Open the chapter 'Of Fathers'. Are you an agriculturist? Open the chapter 'Of Agriculture'." "[13] It seems obvious that we are not in a position to give simple directions to persons wanting to know the law. The common law of the Courts, and the statutory law of the Legislatures are the two primary sources of law, yet delegated legislation in the form of Orders, regulations, directives, and controls are also sources of law. In 1921, Cecil T. Carr wrote that "more than half our modern Acts are to this extent incomplete statements of law."[14] One might stop to ponder whether that means today, some sixty-two years later, the proportion of incomplete statements of law has increased in relation to the size of the civil service. In any case, it is clear that the practice, and the problems of

delegating legislative authority are not merely current issues. It is not fair, though, to imply that these issues were of great concern at the outset. Quite simply, while the balance of activity in Parliament turned from direct administration to supervision, there was not then as great a demand for legislation as there is now in public and in the Legislature.

Perhaps Abraham Lincoln's words best describe the situation: the problem is to obtain a form of government which is "not too strong for the liberties of its people" and yet "strong enough to maintain its existence in great emergencies".[15] Under a system of parliamentary democracy and the rule of law where 'ignorance of the law is no excuse', the law must be available in complete form to the citizens who are governed by it. As well, the rule of law prescribes that there must be fair and impartial treatment of all citizens. In cases where the law is inaccessible in its entirety, or where it is unequally accessible to citizens the goals of the rule of law cannot be realized. In part, the idea that all citizens should know the law is based on the fact that most of our Acts of Parliament ordinarily take effect without previous warning.[16] Also, there are some laws which a citizen may not necessarily need to know - for example, how many of

unemployed feel compelled to familiarize themselves with all or any of the Income Tax Act? Still, the argument can be made that under the rule of law, citizens should know the law, even if the application of the maxim may sometimes be lacking in individual cases. The duty to know the law includes, of course, the duty to know delegated legislation as part of the law. It is indisputable that

> "The direct legislation of Parliament cannot be treated as something separate and self-contained; the statute book is not only incomplete but even misleading unless it be read with the delegated legislation which amplifies and amends it."17

Interestingly, it was the recognition that delegated legislation should be accessible to all citizens that led to both advances and criticisms. In the first case, the main advance was that in the post-World War One era, when the use of delegated legislation grew to be quite acceptable, different jurisdictions began to publish statutory rules and orders in the form of a single volume.[18] In the second case, publishing these rules and orders as a consolidation had the effect of drawing attention to the situation. Legislators and scholars wrote extensively on the subject, and in time this gave life to a new form of Parliamentary activity: the 'Committee to Study the Effects of Delegated Legislation'. Several of these efforts are discussed below; suffice it to say here that in England, in Canada, and in

the provinces there has been an abundance of study in the area. Unfortunately, this point brings the discussion back to the first concern: a wealth of literature and a dearth of action.

Aside from administrative advantages for the use of delegated legislation, there are other justifications. First, there is a lack of time in Parliament to deal with complex problems and issues for legislation. Much of the discussion and debate now takes place in caucus or committee. Second, most Parliaments do not sit throughout the year, and some do not sit for more than a few months at a time. Members have constituency responsibilities and private lives as well as duties to the Party and the House. Sessions are expensive to run, but even if they were not there must be legislative machinery to facilitate the operation of government on a day-to-day basis as well as on an emergency basis whether the elected representatives are there or not. Third, the use of delegated legislation appeals to precedent and a tradition of responsible exercise of authority. The outline above of the history of the use of delegated legislation serves to illustrate this point, but it is also important to note the significance of precedent and tradition in a system of common law such as ours. The fourth and most pertinent justification relates to taxes.

As Carr pointed out,

> "Parliament authorizes taxation, provides money for administration, appropriates the money for particular purposes, and criticizes the way the money goes. But Parliament does not govern the country. The country is governed by the executive, i.e. the Ministers of the Crown responsible to and appointed by Parliament."19

If indeed the problem is to reconcile the acts of the Executive with the supremacy of Parliament, then at least two recourses are available. First, legislators with a majority government could exercise the option of making subsequent amendments to existing legislation, or even of making and passing new legislation to legitimize the actions of the Executive.[20] Second, and more reasonably, legislators could attempt to anticipate situations requiring legislation, and prepare to deal with them or to delegate the responsibility to deal with them.

At this point, it seems appropriate to reflect that in almost any government situation, it is easier to suggest justifications for the maintenance of the status quo, than to suggest practical improvements to the situation. However, in the case of delegated legislation in general, and regulations in particular, the reverse seems to be true. Thus, rather than attempt to give a comprehensive survey of scores of articles, books, and committee reports, the approach will be to deal only

with substantive issues relating to the general philosophy of delegated legislation. A Queen's University Law Professor recently asked "why bother to review delegated legislation?", and went on to comment that

> "In delegating legislative authority, Parliament did not intend the delegate to have absolute freedom of choice, and therefore there is some necessity for Parliament itself or perhaps some other body to ensure that totally wrong-headed decisions are not being taken in the exercise of delegated legislative authority."21

He further commented that possible abuses to the delegation of legislative authority, per se, are compounded by the problem of poor law-making.[22] According to a former U.S. Commission on Federal Paperwork,

> "The necessary paperwork which would be added through greater participation in rulemaking is temporary. It ends when a proposed rule is put into effect. The "bad" paperwork of a poorly written rule which is allowed to go into effect, however can be endless."23

Perhaps these two types of problems can be eliminated with the assistance of various reforms, but even before such a discussion, some attention should be given to traditional "safeguards" available to Parliament.

There are at least five safeguards that are commonly at the disposal of Parliament for greater control of the regulatory process. It is almost too straightforward to

mention that in the first place, the delegation of legislative power should be delegation to a trustworthy authority which commands confidence. Secondly, it is equally evident that the limits of the delegated power should be clearly defined. As well, if a particular group or individual is greatly affected by the proposed delegation of authority, that group or individual should be consulted during the law-making process. Fourthly, there should be provision to publish or make public delegated legislation, so that 'all citizens may know the law', and finally, there should be provision to amend or revoke delegated legislation as required.[24] These "safeguards" are not new proposals, but it seems as though much of the debate on Parliamentary control focuses on these or similar measures.

In terms of the Canadian experience with delegated legislation, it is fair to say that the pattern developed as a sort of time-lapsed parallel to the British experience. The exception to this is, naturally, that Canada as governed firstly by royal prerogative in monopolistic company charters, and later by the administration of a delegate of the monarchy has a built-in tradition of delegated legislative authority. After Canada received her right to responsible government, full use was made of precedent and tradition in the use of delegated legislation. The most obvious example of this is the existence of the provinces: now that the former British North America

Act has been repatriated, we can truely say that s. 92 is an illustration of the division and delegation of legislative authority from one Parliament to several others. Each province has its own body of subordinate legislation, and the state-of-the-art varies as widely as the nature of the provinces.

Following the Second World War, there was a large increase in the use of delegated legislation at the federal level. In 1950, the Parliament of Canada enacted the Regulations Act, which stood with minor amendments until the Statutory Instruments Act came into force in 1971. One of the major changes effected by the new statute was that every statutory instrument, once issued, stands permanently referred to a Joint Committee of the House of Commons and the Senate. As well, the Department of Justice has the ability to call forward any proposed or existing statutory instrument for review and classification. Such measures seem to be indicative of progress in the area of regulatory reform, but there have also been a number of reports and proposals that criticize the 1971 Act. For example, a 1982 report from the Institute for Research on Public Policy surveyed the Canadian regulatory environment, and concluded that as early as 1975, the government had initiated

a series of studies on government regulation through the unlikely vehicle of the Anti-Inflation Program.[25] Though the program was not in itself a measure of regulatory reform, it led to a federal working paper entitled "The Way Ahead". This paper was to reveal the federal government's commitment to undertake "a fundamental examination of the major structural components of our economy and our society.[26]

Several other studies at the federal level have prompted provincial, and even municipal governments, to evaluate their own regulatory processes. These studies include: the Socio-Economic Impact Analysis (SEIA) produced in 1978 by the joint Treasury Board-Consumer and Corporate Affairs effort; the Economic Council of Canada's Regulation Reference in 1980; and the Institute for Research on Public Policy's paper "Regulation and the Government Intervention Program", published in 1977. Various provincial governments and the Law Reform Commission have added to the material on regulatory reform, and the Royal Commission on Financial Management and Responsibility (the Lambert Commission) presented an overwhelming document on general government reform in 1979. Alberta, however, has remained for the most part in a rather moderate position.

The most significant development in terms of the Alberta

regulatory environment was the establishment of a Select Committee of the Legislative Assembly on Regulations in 1973. Alberta's history of using subordinate legislation more or less dates back to 1905 when Alberta attained her status as a province. By 1957, following developments at the federal level, Alberta enacted its own Regulations Act. The 1973 Committee, chaired by MLA Rudolph Zander, was charged with the task of holding public meetings on the topic of Alberta regulations, and making recommendations to the Legislative Assembly. During forty-five full days of meetings, and travel to Quebec City, Ottawa, Toronto, Regina, and Winnipeg, as well as through correspondance with other provincial governments in Canada, scores of submissions were received and considered. The Committee then prepared a report which commented on the following six areas of general concern: definition - the need for a proper definition of a "regulation" and related legislative material; regulation-making empowering clauses - the nature and uses of these clauses as they appear in all legislation, what constitutes an appropriate clause, and the preservation of the distinction between primary and subordinate legislation; advance consultation - the need for and practice of advance consultation by all regulation-making authorities; consolidation and revision - the need for a consolidation and

revision of all Alberta regulations; and scrutiny - the fulfilment of the Parliamentary duty to scrutinize all legislation.[27]

While these areas of concern have been mentioned in part above, it is relevant to suggest that in 1973, promotion of such reforms on a provincial level was a considerable move forward. However, since that time, there has been a full decade of little or no action. Few of the recommendations of the Committee were followed. In particular, the Committee recommended the establishment of a 'Regulatory Review Committee', which would have the responsibility to scrutinize all delegated legislation in a manner similar to the federal Joint Committee on Statutory Instruments.[28] This would seem to suggest that either there is no need for action, of the Government has chosen not to act.

In all fairness, a little of both alternatives rules the Alberta regulatory environment. The Government's position is clear. The current Regulations Act, as well as the Interpretation Act serve as guidelines for a policy that adheres to the doctrine of the rule of law. As well, the 'Drafting Style Manual for Acts, Regulations, and Orders In Council' prepared by the Legislative Counsel Office in 1981 gives some guidelines for the content of a statute that confers

powers to make regulations. As our own Parliamentary Counsel, Mr. Mike Clegg, has so aptly stated:

> "It should not be assumed that the absence of Parliamentary review procedures has necessarily resulted in situations where there is evidence of misuse or possible illegality of regulatory power. In Alberta, for example, where there is no regular review by an Assembly Committee, but where preventive measures are used, such as strong professional advice from Legislative Counsel to Ministers and other regulating bodies, the Government has not been involved in any litigation respecting the validity of regulations."[29]

Of course, the success of this procedure relies, as noted by Clegg, on the status and reputation of the person filling the role of Legislative Counsel. In addition, in most provinces the Legislative Counsel for the Government is the Attorney General, and "internal policing" can sometimes be difficult, as it places the Legislative Counsel in the awkward position of having, at times, to vote on the propriety of delegated legislation which he may have drafted or advised on in the formative stage.[30]

Also, a 1978 ministerial statement by the Government of Alberta restated an earlier response to the 1973 Select Committee of the Legislative Assembly on Regulations:

> "Further, the Legislative Assembly may refer any regulation to the Standing Committee on Law, Law Amendments and Regulations, and such a reference may be made by a resolution moved by any member of the Assembly." 31

At the same time, following the February 1978 First Ministers' Conference, the Government of Alberta joined the federal and provincial governments in agreement that "the burden of government regulation on the private sector should be reduced and the burden of overlapping Federal and Provincial jurisdictions should be eliminated."[32] Presumably, the Alberta Standing Committee on Law, Law Amendments, and Regulations should deal with the aftermath of this agreement, but since 1978 the Committee has only met twice, in 1980, to discuss the licensing of certain businesses in Alberta.[33]

The Government of Alberta has been criticized as being "secretive", and in the sense that an individual has no idea of how to approach the Government for information, this may be true. It is more likely that this criticism is aimed at the seemingly impenetrable civil service, but as long as proper control over the regulatory process and delegated legislative authority is maintained, the size of the bureaucracy should not be a factor. There are at least six "regulatory agencies" in the province, including the Energy Resources Conservation Board, the Liquor Control Board, the Motor Transport Board, the Public Utilities Board, the Securities Commission, and the Racing Commission, and each of these is governed by strict statutory control over the authority delegated to it. For example, the

Racing Commission Act outlines the powers of the Commission, generally delegating authority to "govern, direct, control, and regulate horse racing in Alberta in all or any of its forms."[34] The Energy Resources Conservation Act authorizes the ERCB, "in the performance of the duties and functions imposed on it by this Act and by any other Act, may do all things that are necessary for or incidental to the performance of any such duty or function."[35] It may seem that these two statutes delegate widely divergent legislative powers, but in fact each statute also imposes controls in the administration of the Act by the Lieutenant Governor in Council, or by the Minister responsible in Executive Council.

This is not to imply that the conduct of Lieutenant Governors or Ministers is beyond reproach, but merely to point out that the safeguards exist, technically, and are effective, practically. In some cases, individual rights have been eroded as a result of the tendency to delegate sweeping powers to Ministers.[36] In other cases, Ministerial orders have been challenged and Ministers have been held responsible for inappropriate or negligent actions.[37] In delegating legislative authority to a Lieutenant Governor in Council, a celebrated legal case pronounced that while the powers of delegation possessed by legislators are now very extensive, legislators cannot abdicate their functions.[38]

In other words, delegation of powers must be confined to "reasonable limits". Delegation of power that allows the Minister, Lieutenant Governor in Council, or administrator to "alter the scope or other terms of a statute"[39] is in fact power to legislate, and that power conflicts with our goals in the system of the rule of law, and our constitutional aspirations. However, even so far as Alberta's regulatory agencies are concerned, the validity of delegated legislation seems to be in order. Ultimately, recourse for injustice is available through the judiciary, in all cases that are warranted.

With regard to specific proposals for regulatory reform in Alberta, it is appropriate to mention once more than regulatory reform is a political orphan, and a common rallying cry. In Alberta, especially, political fact lends an element of truth to this: in a seventy-nine seat Legislative Assembly with a seventy-five seat Government majority, there are many political orphans, many rallying cries, and not at all much pressure to find a "home" for either. There is also a belief in the Alberta Progressive Conservative Party that while a complete system of laissez-faire may not exist, the best policy is still to regulate where necessary

in the interests of Alberta - economically, socially, or politically - according to their 1982 Provincial Election Campaign slogan "For Alberta!"

Aside from another look at the recommendations of the 1973 Select Standing Committee on Regulations, the Government of Alberta has several options for reform if indeed it should decide to opt in favour of regulatory reform. Some of the major reforms, as well as several minor reforms are discussed below.

Major reforms, as suggested by various legislators and scholars, have the greatest impact on both policy and and administration. The first of these concerns the movement for greater regulation - more intervention through mixed enterprise, or greater nationalization. While this is primarily an 'economic' reform, it also has social and political implications. However, it is unlikely that Alberta will opt for such a measure given its history of free enterprise, and its more recent experience in resistance to the National Energy Progam and federal desires to centralize the governing of Canada. A more plausible alternative to greater regulation is, of course, deregulation. Deregulation can have many forms; each is dependent on the object it seeks to reform. For example, deregulation of government (administrative) regula-

tions might involve greater consolidation, publication, and review of delegated legislation. Such a measure could be as simple as the circulation of a bulletin to explain departmental directives on employee travel allowances or as complicated as the public inquiry process similar to the recent hearings on Bill 44 - The Labour Statutes Amendment. In terms of social reforms, deregulation might take place by allowing more independent operation in education, or day care, or health care. However, proposals for deregulation are usually accompanied by arguments about short term effects[41], such as the loss of jobs, or instability in society related to government withdrawl from active control in the economy.

A different approach to major regulatory reform is that of "sunset", and more recently, "sunrise" legislation. These proposals originated in American state legislatures, and have proven to be quite useful in controlling delegated legislative authority. Sunset laws work by incorporating provision for expiration, and review to reinstate regulatory measures. The main objection to sunset laws is that after a period of time, Parliaments would have to use valuable legislative time in Assembly or in Committee to review a majority of statutes on the books. Another objection is raised from the idea of giving the responsibility for scrutiny to a Committee: in effect, this

would be to delegate the authority to "legislate" on the merits of statutes, and subordinate law. In Alberta, the idea of a review committee has already been soundly rejected, but during the last session of the Alberta Legislative Assembly, one member introduced a motion to review the possibility of using sunset legislation.[42]

Sunrise legislation is a related approach.[43] Proposed regulatory agencies would, under sunrise legislation, be subject to detailed review before authorization from the legislature. This is similar to a proposal made by the Economic Council of Canada that before-the-fact review has a place along with after-the-fact scrutiny.

Among the several moderate proposals for reform is the suggestion that if the Government were to adopt "freedom of information" legislation, then understanding of the regulatory process would increase dramatically. Another idea is that instead of deregulation, which might have the effect of limiting service to smaller communities, regulatory agencies could adopt the position of "consumer advocate" , or "public ombudsman" in the interests of society. Related to this is the call for more direct representation on regulatory boards and agencies. This, however, is subject to the same problem as that faced by legislators: the citizen who represents the interests of the

community on a regulatory board, for example may have no technical expertise to be competent at the job. And, there is no guarantee that such a representative will really stand for all his "constituency" because he has no real responsibility other than his conscience.

Two other reforms relate to measures that can be taken directly by Government. The first of these is that regulatory agencies should be encouraged to publicize, on a regular basis, statements of policy and rules that they use as pursuant to their own delegated authority. The second measure is that the Executive, or more particularly, Cabinet itself should take steps to ensure greater communication with regulatory agencies. In this way, with the use of Cabinet memoranda, for example, greater control will result. And in the final analysis, the issue is really one of parliamentary control of the use of delegated legislative authority. In the Alberta context, regulatory reform will occur only when the Government of Alberta is sure that it can maintain parliamentary control over delegated authority at the same time as it protects the interests of its citizens.

In closing, it is appropriate to realize that whether reforms are directly related to economics, politics, or society,

there must be a balance of interests in the system of the rule of law. In Alberta, the current political situation tends to support a strong tradition of parliamentary democracy. The unbalanced size of Government in comparison to Opposition need not necessarily be a deterrent to responsible operation in a democracy. In the words of John Stuart Mill,

> "Every increase of the functions devolving on government is an increase of its power, both in the form of authority, and still more, in the indirect form of influence...Experience ...proves that the depositories of power who are mere delegates of the people, that is, of a majority are quite ready (when they think that they can count on popular support) as any organs of oligarchy, to assume arbitrary power, and encroach unduly on the liberty of private life." 44

It is wise to take caution in these words, but it is also heartening to realize that the Government of Alberta is neither an 'organ of oligarchy' or an administrator of 'arbitrary power'. In the Alberta context, the best definition of regulatory reform is that which allows for improvement of parliamentary control within the realm of the rule of law.

NOTES

1. W.T. Stanbury, and Fred Thompson, Regulatory Reform in Canada. (Montreal: The Institute for Research on Public Policy, 1982), p. 128.

2. Rich Jones, "The Many Faces of Regulatory Reform", (State Legislatures, March 1982), p.6.

3. Ibid., p.6.

4. Report of the Select Committee of the Legislative Assembly of Alberta. (November, 1974), p. 4.

5. Ibid., p. 4.

6. These included the following statutory innovations: the Petition of Grievances (1610), the Bill of Rights (1689), and the Act of Settlement (1701).

7. The statute books were filled with examples of regulations, and other statutory instruments as parts of the actual Acts rather than separate pronouncements.

8. Select Committee Report, p. 5.

9. Ibid., p. 6.

10. Ibid., p. 6.

11. Ibid., p. 6.

12. Cecil T. Carr, Delegated Legislation. (London: Cambridge University Press, 1921), p. 1.

13. Ibid., p. 1.

14. Ibid., p. 1.

15. Ibid., p. 6.

16. The caveat, of course, is that the Act itself serves as notice.

17. Carr, op. cit., p. 6.

18. Select Committee Report, op. cit., p. 8

19. Carr, op. cit., p. 22.

20. A criticism that is often raised is that the Government used Orders In Council to introduce major new programs under the promise of fulfilling a pre-election campaign, and then at a much later date retroactively legislated to legitimize its action.

21. David J. Mullan, Review of Subordinate Legislation on the Merits. (M.S.: Queen's University, 1983), p. 1.

22. Ibid., p. 3.

23. Ibid., p. 3.

24. Carr, op. cit., p. 36.

25. Stanbury et. al., op. cit., p. 2.

26. Ibid., p. 2.

27. Select Committee Report, op. cit., p. 26.

28. Stanbury et. al., op. cit., p.

29. Michael Clegg, Parliamentary Review of Regulations. (M.S.: Edmonton), p. 2.

30.

30. Ibid., p. 2.

31. Hansard, Legislative Assembly of Alberta (April 23, 1980)

32. Ibid., p.

33. Standing Committee of Law, Law Amendments, and Regulations, Government of Alberta. (Minutes, 1980), p. 2.

34. Racing Commission Act, Revised Statutes of Alberta, 1980.

35. Energy Resources Conservation Act, Revised Statutes of Alberta, 1980.

36. Raymond D. Schachter, "Controlling the Ministers", (Alberta Law Review, Vol. XVI), p. 388.

37. Ibid., for a complete discussion of cases, see the article.

38. The most well known case is the War Measures Act Reference cited in Elmer Driedger, "Subordinate Legislation", (Canadian Bar Review, Vol. XXXVIII), p. 33.

39. Ibid., p. 34.

40. This is my own opinion, based on my observations as a Legislative Intern in 1982-83.

41. G. Bruce Doern, The Regulatory Process in Canada. (Toronto: Macmillan and Company Canada Ltd., 1978), p. 352.

42. The Member for Edmonton Glengarry, Rollie Cook, introduced this as Motion 116.

43. Jones, op. cit., p. 9.

44. John Stuart Mill, Principles of Political Economy (1848), Donald Winch ed. (Hammondsworth: Penguin Books, 1970), p. 308.

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